

# **FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**THURSDAY  
NOVEMBER 8, 2012  
8:00 A.M.**

**PLANNING DEPARTMENT CONFERENCE ROOM**

## **MEETING NOTES**

PRESENT:

JOE GILLIS, CHAIRMAN  
LEN HOUSE, VICE CHAIRMAN  
FRAN REED, TREASURER  
TODD RULISON, SECRETARY  
WILLIAM SULLIVAN, MEMBER  
ARLENE M. SITTERLY, MEMBER  
JAMES MRAZ, IDA EXECUTIVE DIRECTOR  
LEADER HERALD

### **I. MINUTES FROM OCTOBER 5, 2012 MEETING:**

MOTION : To accept as presented.  
MADE BY : Len House  
SECONDED : Arlene Sitterly  
VOTE : 5 in favor, 0 opposed, 1 abstained (Todd Rulison)

### **II. BUDGET REPORT:**

MOTION : To accept as presented.  
MADE BY : Fran Reed  
SECONDED : Todd Rulison  
VOTE : Unanimous

### **III. COMMITTEE REPORTS:**

#### **A. Nominating Committee:**

- No report.

B. Audit Committee:

- No report.

C. Governance Committee:

- No report.

D. Finance Committee:

- No report.

IV. **OLD BUSINESS:**

A. 1988 Incubator Building Project in Crossroads Industrial Park:

- No new information to report.

B. Tryon Technology Park and Incubator Center Project:

1. Agreement with NYSOGS/ESD/IDA:

- IDA Chairman executed Agreement and forwarded to ESD Attorney.

2. Agreement with C.T. Male for Phase I Environmental Site Assessment:

- C.T. Male will be at Tryon during week of November 5<sup>th</sup> working on Environmental Site Assessment.

IDA DISCUSSION: Jim Mraz stated that C.T. Male commenced on-site work for the Phase I Environmental Site Assessment on Wednesday, November 7<sup>th</sup>. He stated that he spoke with Mike Sawyer from C.T. Male who is conducting the asbestos testing. He stated Mr. Sawyer has advised that there may be a higher cost for laboratory work as part of this asbestos report. He stated that the IDA's agreement with C.T. Male contained just an estimated cost for what the asbestos work would entail because it was impossible to identify all of the potential sampling that may need to be done as part of the Phase I Environment Assessment. He stated that he would keep the IDA Board informed as to what the costs for the laboratory work for the asbestos testing will be.

3. Agreement with Carol's Abstracting for Title Work:

- Carol's Abstracting is working on title search.

C. CG Roxane Water Bottling Plant Project:

1. Closing:

- Lease and PILOT Agreements have been finalized.
- Metes and bounds description of land parcel to be transferred to IDA along with map prepared by licensed land surveyor have been submitted to Kara Lais.
- Deeds have been filed.
- Closing should be shortly.

2. Status of Construction:

- Construction work ongoing.
- All steel erected.
- 50% of siding and roof panels installed.
- Waterlines from wells to Bottling Plant complete.
- Paving of Old Sweet Road completed.
- National Grid has cleared trees along Watershed Road. No work started yet on installation of poles, wire and substation.

D. IDA Parcel on West Side of NYS Route 30A:

- Board of Supervisors adopted resolution authorizing Demolition Team to demolish old house on west side of NYS Route 30A.
- Department of Solid Waste has requested the \$2,000 payment to the NYS Department of Labor. This check has been written per the authorization granted at the last meeting.
- Department of Solid Waste will demolish building in 2012 if it receives Department of Labor approvals in time.

IDA DISCUSSION: Jim Mraz stated that he spoke with the Department of Solid Waste regarding their anticipated schedule for completing the demolition of this old house. He stated that the Department will be filing its request for a waiver with the Department of Labor this week. As soon as the Department of Labor grants the waiver, the Department of Solid Waste will immediately commence work on the demolition. He stated that if the Department of Labor responds in a timely manner, the demolition of this house will be completed in 2012.

E. Update on STAG's Request for Estoppel Certificates:

1. Background:

- STAG has requested that the IDA execute Estoppel Certificates for the following properties:
  - 1) 109 Balzano Drive, Gloversville, NY
  - 2) 122 Balzano Drive, Gloversville, NY
  - 3) 125 Balzano Drive, Gloversville, NY
  - 4) 141 Sal Landrio Drive, Gloversville, NY
  - 5) 6 Clermont Street, Johnstown, NY
  - 6) 150 Enterprise Avenue, Johnstown, NY
  - 7) 231 Enterprise Drive, Johnstown, NY
- At the last IDA meeting, the IDA Board adopted a motion to advise STAG that the IDA will execute the Estoppel Certificates if a Hold Harmless provision is included in them and in the event that STAG does not consent to this that the IDA advise STAG to hire the City of Johnstown to review each property's compliance with the City's Zoning Ordinance/Park Covenants and to provide their written findings to STAG for each property.

2. Status Report:

- Kara Lais advised that she communicated to STAG what the IDA Board agreed to at its October 5<sup>th</sup> meeting. She has not heard anything further from STAG.

IDA DISCUSSION: Jim Mraz stated that Kara Lais advised him that she relayed to STAG the requests that the IDA Board made at its October meeting. She stated that she has heard nothing back from STAG on the IDA's request. Kara Lais advised that she interprets the lack of a response to mean that this is no longer an issue for STAG. Jim Mraz stated that if this issue resurfaces, he would bring it back to the IDA for continued discussion at that time.

V. NEW BUSINESS:

A. Request for Early Termination of Lease for Property at 178 Corporate Drive:

1. Background:

- The IDA currently leases the building at 178 Corporate Drive in Crossroads Industrial Park to the Crossroads Incubator Corporation (CIC).
- Lease Term: November 1, 1994 – June 30, 2015
- As of November 1, 2012, the Lease had been in effect for 18 years.
- CIC subleases the building to Gen-Fame, Inc.

2. Article XI:

- Article XI of the Lease contains language dealing with early terminations:

**SECTION 11.1. EARLY TERMINATION OF THE LEASE AGREEMENT.** The Company shall have the option, at any time, to terminate the Lease Agreement by purchasing the Project Facility or to terminate this Lease Agreement pursuant to Section 7.1(c), upon compliance with the requirements set forth in Section 11.2 hereof, and payment to the Agency equal to \$1,000.00 per year of occupancy under this Lease Agreement, at any time after the 12<sup>th</sup> month hereof.

**SECTION 11.2. CONDITIONS TO EARLY TERMINATION OF THE LEASE AGREEMENT.** To exercise such option, the Company shall provide ninety (90) days written notice to the Agency and the Lender and shall specify therein the date of purchase or termination.

**SECTION 11.3. CONVEYANCE ON PURCHASE.** At the closing of the purchase of the Project Facility pursuant to Section 11.1 hereof, the Agency shall, deliver to the Company all necessary documents (a) to convey to the Company title to the Property being purchased, as the Property exists, subject only to the following: (i) any Liens to which title to such Property was subject when conveyed to the Agency, (ii) any Liens created at the request of the Company, or the creation of which the Company consented to or in the creation of which the Company acquiesced, (iii) any Permitted Encumbrances and (iv) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default, (b) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Facility, and (c) to discharge and release any security interest held by the Agency and to release any other liens or encumbrances held by the Agency and not set forth above. Upon delivery of such title by the Agency, the Company shall deliver a release and agreement that the exculpation provisions and the obligations of the company in Section 5.3(b) and 8.2 hereof, together with the obligation to insure the same, shall survive such conveyance on purchase of the Facility.

3. Request for Early Termination:

- On October 30, 2012, the IDA received a letter from the CIC formally advising that the CIC is exercising its right of early termination of this Lease, per Section 11.1 of the Lease.
- The IDA and CIC must complete the process to terminate this lease within 90 days or January 30, 2013.
- CIC has requested that the IDA approve this request by November 16, 2012.
- CIC is proposing to sell the building to Gen-Fame, Inc.

4. Impacts of Early Termination:

- The existing Lease and PILOT would be terminated.
- The property would no longer be tax exempt.
- The property would immediately return to the tax rolls.
- The property would start making property tax payments and not PILOT payments.
- The IDA would no longer have to report these projects under PARIS after 2012.

5. Documents that will have to be executed by IDA:

- Deed
- TP-584 Form
- RP-5217 Form

6. IDA Legal Fees:

- IDA will pay for cost of Kara Lais representing the IDA in this transaction.

7. Payment Due IDA:

- The lease requires the CIC to make a payment to the IDA to terminate it early.
- This payment would be due at closing. Estimated payment due: \$18,000+/-

8. Review Resolution:

- See handout.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He stated the IDA has received a written request from the Crossroads Incubator Corporation (CIC) to pursue an early termination of its lease with the IDA for the property at 178 Corporate Drive in the Crossroads Industrial Park. He stated this request is the same as the one the IDA received and approved last month with STAG for the property at 141 Sal Landrio Drive in the Crossroads Business Park. Jim Mraz reviewed a drawing of the Crossroads Industrial Park and identified the property at 178 Corporate Drive that is part of this request. He stated the CIC is requesting the early termination because it desires to sell the property to Gen-Fame, Inc. Gen-Fame is currently a tenant in this building.

Jim Mraz reviewed the resolution that was distributed to each IDA Board member. He reviewed the content of the resolution and asked IDA Board members if they had any questions. There were none.

Jim Mraz stated that, similar to the STAG request, the IDA will be generating a revenue from this early termination request. He stated that the IDA would use these revenues to pay for the costs of Kara Lais' work on representing the IDA in this transaction.

**IDA ACTION:**

**MOTION:** To approve a resolution approving a deed conveyance from the Agency to the CIC and authorizing execution and delivery of the same.

**MADE BY:** Arlene Sitterly

**SECONDED:** Fran Reed

**VOTE:** Unanimous

**MOTION:** To authorize a payment in the amount of \$1,500 to Fitzgerald, Morris, Baker and Firth for legal services rendered in this transaction.

**MADE BY:** Joseph Gillis

**SECONDED:** Bill Sullivan

**VOTE:** Unanimous

**B. Fulton County Center for Regional Growth (CRG):**

1. Background:

- On October 18, 2012, the Board of Supervisors and CRG conducted a Press Conference to announce a new Business Development Marketing Plan for Fulton County.
- The new Plan would realign the County's economic development priorities by reestablishing "marketing" as the primary focus of County job creation efforts.
- In a Press Release issued at the Press Conference, Fulton County and the CRG stated that:

1. Redesigning and restarting how the County markets business development was a must, given the events that occurred during the last few years:

- 1) In 2007, Jeff Bray and Peter Sciocchetti, the EDC's and CIC's former economic development executives, convinced the CIC to sell 11 industrial buildings to a real estate investment trust. The sale of these rent-producing assets left the CIC with significantly reduced rental income to support its operations.
- 2) In 2010, the discovery that these two former executives paid themselves significant excess compensation shocked the community.
- 3) In recent years, the national and State recessions have severely restricted business expansions.
- 4) Reduced occupancy rates in the CIC's 7 remaining buildings has reduced rental income and weakened its financial position.

2. The cumulative fiscal impacts on the CIC created by these events has been significant and prompted County leaders and CRG officials to come together to determine how to overcome these events. The Board of Supervisors and CRG Board of Directors determined there needs to be a strong economic development program in Fulton County dedicated to marketing. A new Business Development Marketing Plan for Fulton County was forged to overcome these events and move the community's prospects forward.

2. Key Components of New Business Development Marketing Plan:

- a. **The CRG shall remain as the primary economic development agency in Fulton County. The EDC and CIC shall be dissolved. The CRG's primary mission shall be marketing Fulton County. The CRG will no longer be involved in the management of real estate. Formal plans will be developed shortly to facilitate the dissolutions of the CIC and EDC.**
- b. **Starting January 1, 2013, the Board of Supervisors shall have an increased role in the governance of the CRG by:**
  1. **Appointing up to four (4) members of the CRG Board of Directors.**
  2. **Requiring the CRG to annually file its audited financial statements with the Chairman of the Board of Supervisors.**
- c. **Fulton County will execute a new and significantly strengthened Marketing Agreement with the CRG that will include the following requirements:**
  1. **Fulton County's contribution to the CRG shall be utilized for marketing Fulton County and not to fund the general operations of the CRG**
  2. **The CRG will submit an annual Marketing Plan and associated budget to the Board of Supervisors for review and approval.**
  3. **The Marketing Plan will identify specific marketing goals and objectives.**
  4. **The Plan will allow for the Board of Supervisors to assess the CRG's success in achieving goals and objectives.**
  5. **Payments to the CRG will be based upon the submission of monthly vouchers that document CRG expenses directly related to implementing the marketing goals and objectives specified in the Marketing Agreement. This is similar to the method used for other County-sponsored Core programs.**
- d. **The CRG will assume responsibility for administering all loan pools currently administered by the EDC.**
- e. **The CRG must adopt a balanced 2013 Budget and revised staffing plan that are based upon realistic revenues.**

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. Arlene Sittlerly asked when the CIC and EDC may be dissolved. Jim Mraz stated that is not currently known for sure. He stated, for example, the CIC must determine how it is going to dispose of the buildings that it currently operates and maintains. He stated that the CIC would not dissolve until such as they were able to either sell all of the buildings or transfer ownership and operation responsibilities to another entity.

## **VI. OTHER BUSINESS:**

### **A. 2012 PILOT Report:**

1. Background:
  - Each year, the IDA sends a letter to every company it has a PILOT with asking that they fill out a PILOT Report.
  - The IDA also sends a similar letter to all local taxing jurisdictions impacted by an IDA PILOT. The information from local taxing jurisdictions is used to compare against the information received from companies.
  - The 2012 letters and reports should be mailed out by end of week.
  - Information received back from the effort is used to complete the IDA's annual financial report.
2. IDA-Owned Properties:
  - Attached is a list of IDA- owned properties that letters will be sent to.

### **B. NYSEDC Invoice:**

1. IDA has received the annual invoice from the NYSEDC to renew the IDA's membership.
2. Total Invoice: \$450.00
3. This is a budgeted expense.

#### **IDA ACTION:**

**MOTION:** To authorize the issuance of a \$450 payment to the NYSEDC for the IDA's 2013 membership.

**MADE BY:** Joseph Gillis

**SECONDED:** Bill Sullivan

**VOTE:** Unanimous

### **C. Executive Session:**

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:
  - i. matters which will imperil the public safety if disclosed;
  - ii. any matter which may disclose the identity of a law enforcement agent or informer;
  - iii. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
  - iv. discussions regarding proposed, pending or current litigation;
  - v. collective negotiations pursuant to article fourteen of the civil service law;



- vi. **the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;**
- vii. the preparation, grading or administration of examinations;
- viii. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

MOTION: To go into Executive Session to discuss, **“the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.”**

MADE BY : Todd Rulison  
 SECOND : Arlene Sitterly  
 VOTE : Unanimous  
 TIME : 8:40 a.m.

MOTION : To go out of Executive Session.  
 MADE BY : Todd Rulison  
 SECOND : Fran Reed  
 VOTE : Unanimous  
 TIME : 8:45 a.m.

#### **D. Vacancy on IDA Board:**

1. Background:
  - Arlene Sitterly has decided to resign from the IDA Board at the end of 2012.
  - This will create a vacancy as of January 1, 2013.
2. Recommendation for New IDA Member:
  - George Bevington has expressed an interest in serving on the IDA Board.

IDA ACTION:

MOTION: To recommend to the Fulton County Board of Supervisors that George Bevington from Johnstown, NY be appointed to the IDA Board to fill the vacancy to be created by the resignation of Arlene Sitterly as of December 31, 2012.

MADE BY: Arlene Sitterly  
 SECONDED: Fran Reed  
 VOTE: Unanimous

**V.     CLOSE MEETING:**

MOTION       :       To close the meeting.  
MADE BY       :  
SECONDED     :  
VOTE          :  
TIME          :